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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,170	01/15/2004	Makoto Sasaki	36375	4859
116 7590 02/01/2008 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			EXAMINER FLORES, LEON	
			ART UNIT 2611	PAPER NUMBER
			MAIL DATE 02/01/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/758,170

Applicant(s)

SASAKI ET AL.

Examiner

Leon Flores

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments with respect to claims (1-3 & 5-7) have been considered but are moot in view of the new ground(s) of rejection.

### ***Response to Remarks***

Applicant asserts that, *"Rich fails to teach or suggest that "the first base station information is included in the signal which is sent from the first base station and received at said first antenna," and that "the second base station information is included in the signal which is sent from the second base station and received at said second antenna," as claimed in claims 1"*.

The examiner respectfully disagrees. See office action below.

Applicant further asserts that, *"Rich does not mention the inclusion of any type of base station information in the received signal having a strength evaluated to select the proper antenna"*.

The examiner respectfully disagrees. See office action below.

Applicant finally asserts that, *"Rich does not make any reference to acquiring any base station information, or to selecting the antenna based on the received field strength of the received signal that includes such base station information, as claimed in claim 5"*.

The examiner respectfully disagrees. See office action below. Furthermore, the applicant does not really teach, in the claims nor in the specifications, what is this "base station information".

***Specification***

2. The disclosure is objected to because of the following informalities:
3. In page 11, lines 2-6, the applicant fails to disclose what this "base station information" is. He only teaches that "the information included in a message received from the base station". Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. **Claims (1-3 & 5-7) are rejected under 35 U.S.C. 103(a) as being unpatentable over Rich. (US Patent 5,940,452)**

Re claim 1, Rich discloses a diversity receiver used in a CDMA communication system comprising: a first antenna for receiving signals from base stations (See fig. 10: 820), the base stations including a first base station and a second base station which is different from the first base station (See fig. 10: 804 & 806); a second antenna for

receiving signals from base stations (See fig. 10: 822); a received field strength measuring unit for measuring a first received field strength indicating a field strength of an intermittent signal received at said first antenna and a second received field strength indicating a field strength of an intermittent signal received at said second antenna, wherein said intermittent signals are sent from any one of the base stations every designated slot cycle in standby mode (See fig 10: 812 or fig. 7: 704); an information storage unit for storing the first received field strength and the second received field strength (See fig. 10: 814);

But the reference of Rich does not explicitly teach a base station information acquiring unit for acquiring first base station information and second base station information and storing the first base station information and the second base station information in said information storage unit (See fig. 10: 814).

However, in another embodiment (Fig. 7), Rich discloses a base station information acquiring unit (108) for acquiring first base station information ("DX" & " $E_c/I_o$ ") and second base station information ("DX" & " $E_c/I_o$ ") and storing the first base station information and the second base station information in said information storage unit. (108) Furthermore, "DX" and  $E_c/I_o$  corresponds to the demodulated signal and the signal to noise ratio, respectively.

Therefore, it would have been obvious to one of ordinary skills in the art to have incorporated these features into the system of Rich for the benefit of optimizing the quality of the received signal.

The reference of Rich discloses the limitations as claimed above, except he fails to explicitly teach

an antenna selection unit for selecting one of said first antenna and second antenna at a higher received field strength based on the first received field strength of the signal including the first base station information and the second received first strength of the signal including the second base station information which are stored in said information storage unit immediately prior to start of a phone conversation when a transition is made from standby mode to the phone conversation, wherein said first base station information is included in the signal which is sent from the first base station and received at said first antenna, and wherein said second base station information is included in the signal which is sent from the second base station and received at said second antenna.

However, in another embodiment, Rich discloses an antenna selection unit for selecting one of said first antenna and second antenna at a higher received field strength based on the first received field strength of the signal including the first base station information and the second received field strength of the signal including the second base station information which are stored in said information storage unit immediately prior to start of a phone conversation when a transition is made from standby mode to the phone conversation. (See fig. 7: 708 & col. 22, line 56 – col. 23, line 24)

Therefore, it would have been obvious to one of ordinary skills in the art to have incorporated these features into the system of Rich for the benefit of optimizing the quality of the received signal.

Re claim 2, Rich further discloses that, wherein said antenna selection unit selects one of the first and second antennas alternately every said designated slot cycle in standby mode, and wherein said received field strength-measuring unit further stores field strength information regarding the field strength at the antenna selected by said antenna selection unit. (See figs. 3 & 7. Furthermore, this is well known in CDMA systems.)

Re claim 3, Rich further discloses that, wherein, in standby mode, said antenna selection unit adjusts ratios at which the antennas are selected according to the field strengths received at the antennas respectively (See fig. 7), and wherein said received field strength-measuring unit further stores field strength information regarding the field strength at the antenna selected by said antenna selection unit in said information storage unit. (See figs. 3 & 7)

Claim 5 is a method claim corresponding to system claim 1. Hence, the elements in system claim 1 would have necessitated the steps performed in method claim 5. Therefore, claim 5 has been analyzed and rejected w/r to claim 1 above.

Claim 6 is a method claim corresponding to system claim 2. Hence, the elements in system claim 2 would have necessitated the steps performed in method claim 6. Therefore, claim 6 has been analyzed and rejected w/r to claim 2 above.

Claim 7 is a method claim corresponding to system claim 3. Hence, the elements in system claim 3 would have necessitated the steps performed in method claim 7. Therefore, claim 7 has been analyzed and rejected w/r to claim 3 above.

***Contact***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leon Flores whose telephone number is 571-270-1201. The examiner can normally be reached on Mon-Fri 7-5pm Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Payne can be reached on 571-272-3024. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.




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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LF  
January 24, 2008

  
DAVID C. PAYNE  
SUPERVISORY PATENT EXAMINER